

Senate Bill 1449 (Johnson)

Campaign Loans

Version: Amended, April 16, 2004

Status: Passed Senate Elections to Appropriations

Set for hearing: May 3, 2004

Executive Summary

SB 1449 would establish that the \$100,000 limit on the amount that a state candidate may personally loan to his or her campaign includes the proceeds of a loan obtained by the candidate from a commercial lending institution.

Recommendation

Staff recommends that the Commission support the bill.

Background

Under current law, a candidate for elective state office may not personally loan to his or her campaign an amount, the outstanding balance of which exceeds \$100,000. Loans obtained by a candidate from a commercial lending institution are exempt from the \$100,000 loan limit.

During the recall election, Governor Schwarzenegger borrowed \$4.5 million from a commercial lending institution and loaned \$4 million of the loan proceeds to his campaign. The \$4 million was reported on his campaign statements as a loan, in accordance with the requirements of the Act. Schwarzenegger's actions were consistent with regulation 18530.8(c), which provides:

“(c) The proceeds of a loan made to a candidate by a commercial lending institution for which the candidate is personally liable, pursuant to the terms of subdivision (a) of Government Code section 85307, which the candidate then lends to his or her campaign do not count toward the \$100,000 loan limit of subdivision (b) of Government Code section 85307.”

Schwarzenegger and his campaign committee were then sued in superior court on the ground that the \$4 million loan to his committee violated the Act. Although the court found in *Camp v. Schwarzenegger* (Super. Ct. Sacramento County, 2004, No. 03AS05478) that the loan had been obtained in the regular course of the bank's business on terms available to the general public, it also found that the loan had violated the Act. The court stated:

“The Court finds that Section 85307(b) prohibits a candidate from personally loaning his or her campaign an amount, the outstanding balance of which exceeds one hundred thousand dollars (\$100,000), regardless of the original source of the monies used by the candidate to fund the personal loan. In this respect, the limitation under 85307(b) applies even though the original source of the funds used by the candidate to fund the loan to his or her campaign is a commercial loan to the candidate that meets the requirements of Section 85307(a).”

The court barred Governor Schwarzenegger from using campaign funds to repay the personal loan and further found that “2 CCR section 18530.8(c) is an erroneous and unreasonable construction of Section 85307, which fails to carry out the purpose of, and is inconsistent with, Title 9 of the Government Code.”

Analysis

SB 1449 would establish that, regardless of the source of funds, a candidate may only loan his or her campaign an amount which does not exceed a total outstanding balance of \$100,000.

The bill would make the following changes to existing law:

“(a) The provisions of this article regarding loans apply to extensions of credit, but do not apply to loans made to a candidate by a commercial lending institution in the lender’s regular course of business on terms available to members of the general public for which the candidate is personally liable.

“(b) ~~A~~ *Notwithstanding subdivision (a), a candidate for elective state office may not personally loan to his or her campaign an amount, including the proceeds of a loan obtained by the candidate from a commercial lending institution, the outstanding balance of which exceeds one hundred thousand dollars (\$100,000). A candidate may not charge interest on any loan he or she made to his or her campaign.*” (Section 85307)

This language expressly includes funds obtained from loans from commercial lending institutions in the \$100,000 personal loan limit and clarifies in statute the findings of the *Camp v. Schwarzenegger* decision.

Under the bill, a candidate could borrow more than \$100,000 from a commercial lending institution, but could only *lend* to his or her campaign an amount that does not exceed a total outstanding balance of \$100,000. The amount that a candidate could borrow and *contribute* to his or her campaign would not be subject to limits.

The Commission is currently scheduled to review regulation 18530.8 and section 85307 during pre-notice discussion in August of this year. While staff believes the Commission has the authority to modify the regulation consistent with the court’s decision, amendment of the statute as proposed in SB 1449 would clarify the issue. Other pending legislation, AB 2842 (Leno) also addresses this topic.